

In the Matter of KITTINGER COMPANY, INC. and UNITED FURNITURE
WORKERS OF AMERICA, C. I. O.

Case No. 3-R-1098.—Decided February 19, 1946

*Messrs. Edward J. Flaherty and Fred J. Batson, of Buffalo, N. Y.,
for the Company.*

Mr. Joseph J. Lovas, of Buffalo, N. Y., for the Union.

Mr. John A. Nevros, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by United Furniture Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Kittinger Company, Inc., Buffalo, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Cyril W. O'Gorman, Trial Examiner. The hearing was held at Buffalo, New York, on December 6, 1945. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Kittinger Company, Inc., a New York corporation, operates a plant in Buffalo, New York, where it is presently engaged in the manufacture of furniture, its peacetime function. During most of 1945 the Company was in the process of reconverting from its wartime manufacture of aluminum airplane parts. During a normal peacetime year the Company purchases raw materials valued in ex-

cess of \$250,000, of which 75 percent is procured from sources outside the State of New York. During a similar period, the Company manufactures finished products valued in excess of \$850,000, of which approximately 75 percent represents shipments to points outside the State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Furniture Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its production and maintenance employees, including employees of the upholstering department, until the Union has been certified by the Board in an appropriate unit.¹

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.²

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

¹ On July 10, 1945, the Company entered into the last of a group of successive collective bargaining contracts with the Independent Furniture Workers' Union, an unaffiliated labor organization, covering its production and maintenance employees, excluding employees of the upholstering department. This contract is apparently one for members only and provides that it is to be effective for 1 year. Thereafter, on October 23, 1945, the Independent Furniture Workers' Union by vote of its membership was dissolved.

With respect to the employees in the upholstering department, it appears that they were last covered by a contract between the Company and the Upholsterers Protective and Social Club, an unaffiliated labor organization, in 1941. That agreement was for an initial period ending June 6, 1942, and was automatically renewable from year to year thereafter in the absence of notice by either party. Although no such notice has ever been given, it is clear that, when the Company's change over from normal peacetime operations to war production in 1942 caused the elimination of the upholstering department and the transfer of employees in this department to other assignments throughout the plant, the Upholsterers Protective and Social Club either became dormant or ceased to exist.

The Company does not urge these contracts as a bar. In any event, however, because the Independent Furniture Workers' Union and the Upholsterers Protective and Social Club are no longer in existence as functioning representatives of the employees covered by the respective contracts, the contracts do not constitute a bar. See *Matter of Mission Manufacturing Company*, 64 N. L. R. B. 1289; and *Matter of The Black-Clawson Company*, 63 N. L. R. B. 773. Moreover, with particular reference to the contract of the Independent Furniture Workers' Union, it cannot constitute a bar for the additional reason that it is for members only. See *Matter of Reo Motors, Inc.*, 61 N. L. R. B. 1579, and cases therein cited.

² The Field Examiner reported that the Union submitted 95 membership designation cards, 78 of which bore the names of employees listed on the Company's then current pay roll, and that there are approximately 151 employees in the unit sought.

IV. THE APPROPRIATE UNIT; THE DETERMINATION OF REPRESENTATIVES

The Union seeks a unit covering all production and maintenance employees of the Company, including the employees of the upholstering department. The Company contends that two separate bargaining units are appropriate, consisting of (1) all production and maintenance employees, exclusive of the workers in the upholstering department, and (2) all employees in the upholstering department.

The Company manufactures furniture in two main buildings. During the pre-war years the Company operated, as part of its furniture manufacturing business, an upholstering department. In 1942 the Company converted to war work with the result that the upholstering department ceased to exist, and the upholsterers were given other production assignments throughout the plant. Early in 1945 the Company began reconverting to its peacetime operations and was actively engaged in reinstating the upholstering department at the time of the hearing.

The Company bases its contentions for two separate units upon its collective bargaining history extending back to 1937. Except for the war years, when there was no upholstering department, that department always has been bargained for separately from the production and maintenance employees. Thus, beginning in 1937, the Upholsterers Protective and Social Club became the bargaining representative of employees in the upholstering department. Contracts were executed annually until July 1941. Also in 1937 two other labor organizations, Kittinger Mill Workers Union and Kittinger Finishers Union were formed as the representatives of the mill department and the finishing department, respectively. The Company bargained with these unions until 1938 when they combined to form the Kittinger Furniture Workers Union. Thereafter the Company dealt with this body as the representative of the employees in the mill and finishing departments until the organization was dissolved in 1939. Since 1939 the Company has been bargaining with the Independent Furniture Workers Union concerning all production and maintenance workers, except employees of the upholstering department. The Company signed its last contract, which apparently was for members only,³ with the Independent Furniture Workers on July 10, 1945, but thereafter on October 23, 1945, this organization was dissolved.

In our opinion, the evidence points to the equal propriety either of a single production and maintenance unit as sought by the Union, or of two separate units as urged by the Company.

Favoring the establishment of two separate units are the following facts: the upholstering department is located at one end of the third

³ See footnote 1, *supra*.

floor of the main building and is further separated from the rest of the plant by a brick firewall; it is under the separate supervision of a production manager and three foremen, and the Company maintains separate pay rolls for this and other departments; the upholsterers in issue are journeymen whose craft identity we have heretofore recognized;⁴ their wages are higher than other employees of the Company; and the Company has for many years been bargaining for these employees separately from the production and maintenance employees.

On the other hand, in addition to the fact that no labor organization presently seeks to represent the employees in the upholstering department in a separate unit, there are *indicia* of integration of this department with the production and maintenance departments which argue for the establishment of a single unit. Thus, in the manufacture of upholstered furniture the wood frames are constructed in the various other departments and passed along to the upholstering department for completion. From there the articles of furniture go to the inspection department and finally to the shipping department, in an apparently continuous flow of work. Furthermore, all employees punch the same main time clocks, enjoy the same vacation privileges, and have similar hours of work, and working conditions.

Under the circumstances, we shall make no final unit determination at this time, but shall be guided by the desires of the employees involved as expressed in the elections directed hereinafter. In the event that the employees in the two voting groups, described hereinafter, voting separately, select the Union, they shall together constitute a single appropriate unit.

We shall direct that separate elections by secret ballot be held among the employees in the two voting groups described below who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction:

(1) All production and maintenance employees, excluding employees of the upholstering department, office and clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

(2) All employees of the upholstering department, excluding office and clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

⁴ See *Matter of Chris-Craft Corporation*, 65 N. L. R. B. 1063 and *Matter of The Nahon Company*, 42 N. L. R. B. 329.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Kittinger Company, Inc., Buffalo, New York, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Third Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the voting groups described in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine in each of the voting groups whether or not they desire to be represented by United Furniture Workers of America, C. I. O., for the purposes of collective bargaining.